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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,510	03/13/2001	Hans-Peter Weitzel	U-Wp-5577 Wacker	1883

7590 01/28/2004

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EXAMINER
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REDDICK, MARIE L

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 01/28/2004

20

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/805,510

Applicant(s)

WEITZEL, HANS-PETER

Examiner

Judy M. Reddick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/20/03 & 11/03/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-27 and 29-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-27 and 29-40 is/are rejected.
- 7) ☒ Claim(s) 41 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### Claim Objections

1. Claim 41 is objected to because of the following informalities: In claim 41 @ line 3, "2-acrylamido-2methylpropanesulfonic acid" should read "2-acrylamido-2-methylpropanesulfonic acid". Appropriate correction is required.

### Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21-27 and 29-40 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Geissler(U.S. 6,331,587).

Geissler discloses a process for the preparation of vinyl ester polymer dispersions which are stabilized with protective colloids and have a high solids content, to the so-prepared dispersions, and to the use of these dispersions, or of the dispersible dispersion powders obtained therefrom by spray drying, for example, for modifying building materials. More specifically, Geissler teaches processes for the preparation of dispersions which comprise a

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copolymer of vinyl ester and further monomer(s) copolymerizable with the vinyl ester stabilized with a protective colloid, viz., 2 to 15 wt.% of a polyvinyl alcohol governed by a degree of hydrolysis of 80 to 99 mol%, preferably, 88 mol % wherein the further monomer can include up to 50 wt.% of monomers which include ethylene, esters of (meth)acrylic acid and up to 5 wt.%, preferably 0.1 to 5% by weight, based on the total amount of monomers employed, of monoolefinically unsaturated monocarboxylic and dicarboxylic acids such as(meth)acrylic acid, etc.

Geissler teaches @ col. 4, lines 7-24, that the dispersions prepared according to the invention can be employed as for modifying building materials, for example tile adhesives, composite thermal insulation adhesive and filling compositions, plasters and repair mortars and that plastics powders which are very readily redispersible can be prepared by methods known per se, for example, by spray drying from the dispersions prepared according to the invention.

Such plastics powders can likewise be employed in hydraulically setting building materials and in colored powder coatings. More specifically, Geissler teaches the use of the polyvinyl ester dispersions as binders in building materials and for the preparation of redispersible dispersion powders, preferably for use in building materials and colored powder coatings. Geissler at col. 8, lines 13-50, teaches that the spray dried dispersions(powders) of the Runs(7, 12 and 14), in combination with an anticaking agent in an amount of 12 wt.%(talc + dolomite) and cement, in an amount falling within the scope of the claims, are used in hydraulically setting building materials. Geissler therefore anticipates the instantly claimed invention with the understanding that the components of the building materials of Geissler overlap in scope with the components of the hydraulically settable inorganic binder-based construction adhesive per the claimed invention. Even if it turns out that the Examiner has somehow missed the boat and the claims are not anticipated, it would have been obvious to the skilled artisan to extrapolate, from the disclosure of Geissler, the hydraulically settable inorganic binder-based construction adhesive, as claimed, as per such having been within the purview of Geissler's general disclosure and with a reasonable expectation of success .

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As to the introductory phrase "A process for improving the tensile strength of a set cementitious or cement free, inorganic binder-based construction adhesive" per claim 37, such cannot serve to patentably distinguish the claimed method from that of Geissler. That language, in effect, is the result of combining a protective-colloid stabilized aqueous polymer dispersion or redispersible polymer powder therefrom and a cementitious or cement-free, inorganic binder-based construction adhesive. While the prior art does not show a specific recognition of that result, its discovery by applicants is tantamount only to finding a new use for an otherwise old composition(reference In re Tomlinson, 150 USPQ 623).

As to the dependent claims, the limitations are either taught by Geissler, suggested by Geissler or would have been obvious to the skilled artisan and with a reasonable expectation of success.

#### Allowable Subject Matter

5. Claims 41 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The instantly claimed invention is deemed allowable over the prior art of record, Geissler, meritorious of the closest prior art, as per said art neither anticipating nor rendering obvious the precisely defined hydraulically settable inorganic binder-based construction adhesive, as claimed. One having ordinary skill in the art would not have been endowed with any motivation to extrapolate, from the disclosure of Geissler, the precisely defined auxiliary monomer which includes monomers selected from the group consisting of acrylamide, 2-acrylamido-2-methylpropanesulfonic acid, vinylsulfonic acid, acrylamidoglycolic acid and maleic anhydride governed by a content of from 0.2 to 1.5 weight percent, with any reasonable expectation of success.

#### Response to Arguments

6. Applicant's arguments filed 10/20/03 have been fully considered but they are not persuasive.

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Relative to Geissler-----The crux of Counsel's arguments appear to hinge on Geissler providing no motivation to firstly select hydrophilic monomers and secondly to use those monomers only in the critical claimed range of 0.2 to 1.5 weight percent. With all due respect to Counsel's opinion, Geissler teaches that monoolefinically unsaturated monocarboxylic acids and dicarboxylic acids, for example, (meth)acrylic acid, maleic acid, fumaric acid and itaconic acid can be used as a comonomer in forming the vinyl ester polymer and invites the use of said comonomers in a preferred amount of 0.1 to 5 wt.%(paragraph bridging cols. 2 & 3). More specifically, Geissler encourages the use of neutral and anionic comonomers, exclusively, in the production of the vinyl ester copolymers which clearly translates to an anticipation of the claimed invention. Moreover, Prior art which teaches a range within, overlapping, or touching the claimed range anticipates the claimed range if the prior art range discloses the claimed range with sufficient specificity and to this end, the range of 0.1 to 5 % by weight per Geissler is disclosed with sufficient specificity so as to engender anticipation of the claimed range. Consult Atlas Powder Co. v. IRECO Inc., 190 F.3d 1342, 1345, 51 USPQ2d 1943, 1945 (Fed. Cir. 1999); ex parte Lee, 31 USPQ2d 1105, 1106 (Bd. Pat. App. & Int. 1993) (seven-member expanded panel; W. Smith and McCandlish, Examiners-in-Chief, concurring; Pellman and Steiner, Examiners-in-Chief, concurring in part and dissenting in part).

#### Conclusion

7. The prior art listed on the attached FORM PTO-892 is cited as of being illustrative of the general state of the art.
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

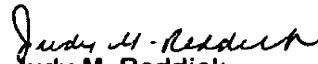
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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judy M. Reddick whose telephone number is (571)272-1110. The examiner can normally be reached on Monday-Friday, 6:30 a.m.-3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-8183.

  
Judy M. Reddick  
Primary Examiner  
Art Unit 1713

JMR *JMR*  
01.23.04